

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 1303 (S/S) year 2003

Digamber Singh Negi
S/o late Shri Fateh Singh

Versus

State of Uttaranchal

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 30.10.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 1303(S/S) 2003

**Digamber Singh Negi,
S/o Late Shri Fateh Singh
Negi, Resident of Jaunpur,
Ward No. 2, Kotdwar,
District Pauri Garhwal**

Vs.

**(1) State of Uttaranchal
Through Secretary, Medical
Health and family Welfare
Uttaranchal, Dehradun**

**(2) Director General, Medical
Health and Family Welfare,
Govt. of Uttaranchal Dehradun.**

....Respondents

Counsel for the petitioner Sh. Rajendra Dobhal

Dated:-30-10-2003

Hon'ble Rajesh Tandon, J.

Heard Shri R.Dobhal counsel for the petitioner standing
counsel for the respondent no. 2.

By the Impugned order the petitioner has challenged the order dated 23-4-2003 (Annexure 4) to the writ petition.

Brief facts giving rise to the present writ petition, are that the petitioner is posted as the junior clerk in the office of Chief Medical officer, Uttarkashi. On 24-4-2002 Director General Secretary,

Medical, Health and Family welfare Uttaranchal Dehradun has passed an order by placing the petitioner under suspension on the ground of certain irregularities.

After the aforesaid suspension order the inquiry officer was appointed who has submitted the charge sheet on 13-6-2003. The petitioner has filed his reply on 3-7-2002 in which he has denied the charges leveled against him. He has denied that he has committed any irregularities.

On 23 April 2003 the inquiry officer has imposed punishment upon the petitioner i.e censor and withholding one increment in pay scale for five years and also issuing a direction to the effect that in future, no account work shall be assigned to the petitioner.

The petitioner against the order dated 23-4-2003 has made a representation on 9-6-2003 requesting him for setting aside the order passed against him. The petitioner has challenged the order dated 23-4-2003 by way of present writ petition.

Shri R. Dobhal has placed reliance on Rule 10 (2) of Uttar Pradesh Employees Government Servant (Discipline and Appeal) rules 1999. As will appear from sub clause 2 of rule 10 that the government servant shall be informed regarding the imputation against him and shall be called upon to submit his explanation within a reasonable time. Sub clause 2 of Rule 10 is quoted below:-

“The Government Servant shall be informed to the substance of the imputations against him and called upon to submit his explanation within a reasonable time. The Disciplinary Authority shall after considering the said explanation, if any, and the relevant records, pass such orders as he considers proper and where a penalty is imposed, reason thereof shall be given. The order shall be communicated to the concerned Government Servant.”

Petitioner has further submitted that the he cannot be held responsible for the charges, leveled against him. The punishing authority was required to give an opportunity to the petitioner by calling an explanation before passing the impugned order.

A perusal of the order dated 23-4-2003 shows that the Director General has passed the following order: -

श्री दिगम्बर सिंह नेगी, कनिष्ठ लिपिक कार्यालय मुख्य चिकित्साधिकारी, उत्तरकाशी को डा० हरिदास वर्मा, तत्कालीन मुख्य चिकित्सा अधीशक, संयुक्त चिकित्सालय, कोटद्वार पौड़ी गढ़वाल के दिनांक 6-7-2001 को कार्यमुक्त होने के उपरान्त प्रभार प्रमाण पत्र बैंक/ कोषागार जाने से रोककर दिनांक 6-7-2001 से 18-7-2001 तक अनाधिकृत रूप से किये गये आहरण एवं वितरण के फलस्वरूप महानिदेशालय के आदेश संख्या -उप/ लिपिक /14/2002/12447 दिनांक 24-4-2002 के द्वारा निलम्बित किया गया था तथा निलम्बन के उपरान्त उन्हे कार्यालय मुख्य चिकित्सा अधिकारी, टिहरी से सम्बृद्ध किया गया था । महानिदेशालय के पत्र संख्या -उप/ लिपिक/14/2002/12445 दिनांक 24-4-2002 द्वारा आरोप पत्र देकर मुख्य चिकित्सा अधिकारी, उत्तरकाशी से जांच करायी गई, जहां अधिकारी से प्राप्त जांच रिपोर्ट के आधार पर आरोप सिद्ध पाये जाने की स्थिति में श्री दिगम्बर सिंह नेगी की चरित्र पंजिका में निम्न प्रतिकूल प्रविष्टि प्रदान की जाती है। श्री दिगम्बर सिंह नेगी को इस कृत्य के लिये भर्त्सना की जाती है तथा पांच वर्षों तक के लिये एक वार्षिक वेतन वृद्धि रोक दी जाती है व भविष्य में श्री नेगी से लेखा कार्य नहीं कराया जाय।

श्री नेगी के विरुद्ध उपरोक्त प्रकरण से सम्बन्धित प्रचलित विभागीय कार्यावाही समाप्त की जाती है। श्री नेगी को सेवा में सवेतन बहाल किया जाता है। श्री नेगी की बहाली के उपरान्त उनके मूल तैनाती स्थान मुख्य चिकित्सा अधिकारी, उत्तरकाशी के अधीन कनिष्ठ लिपिक के पद पर समायोजित किया जाता है तथा बहाली पर कार्यभार ग्रहण करने के उपरान्त तैनाती स्थान हेतु अवमुक्त कर दिया जायें।

Standing counsel has pointed out Rule 1, which provides the alternative remedy of filing the appeal. It reads as under: -

Appeal (1) Except the orders passed under these rules by the Governor, the Government Servant shall be entitled to appeal to the next higher authority from an order passed by the Disciplinary Authority.”

(2) The appeal shall be addressed and submitted to the Appellate Authority. The Government Servant Preferring an appeal shall do so in his own name. The appeal shall contain all material statements and arguments relied upon by the appellant.

(3) The appeal shall not contain any intemperate language. Any appeal, which contains such language, may be liable to be summarily dismissed.

(4) The appeal shall be preferred within 90 days from the date of communication of impugned order. An appeal preferred after the said period shall be dismissed summarily.”

Apart from rule 11 there is another rule known as rule 12 which provides that the Appellate Authority shall pass the orders after considering the following factors: -

“Consideration of Appeals. *The Appellate Authority shall pass such order as mentioned in clauses (a) to (d) of rule 13 of these rules, in the appeal as he thinks proper after considering:-*

(a) Whether the facts on which the order was based have been established;

(b) Whether the facts established afford sufficient ground for taking action; and

(c) Whether the penalty is excessive, adequate or inadequate.

As will appear from the aforesaid sub rule (a), (b), (c) of Rule 12 of Uttar Pradesh Employees Government Servant (Discipline and Appeal) rules 1999 that the appeal lies on facts as well as on the ground of quantum of penalty.

Shri Rajendra Dobhal has referred out Annexure '6' of the writ petition dated 28.9.2002 showing the malafide intention of the respondents against the petitioner while passing the impugned order . He has further stated that he was not directly involved.

However, question of fact as well as law along with the quantum of punishment shall be suitably considered by the Appellate Authority in accordance with law.

So far as the observation of the Director General that: -

“ भविष्य में श्री नेगी से लेखा कार्य नहीं कराया जायें”

Suffice it to observe that the Appellate Authority shall also consider as to whether the observation of the Director is in accordance with rule 3(a) of Uttar Pradesh Employees Government Servant (Discipline and Appeal) rules 1999 i.e. relating to the censor i.e. minor punishment.

Since the petitioner has available with him alternative remedy, no interference under Article 226 of the Constitution of India is possible.

The Appellate Authority shall provide an opportunity to the petitioner on facts as well as law. The appellate authority shall dispose of the appeal within a period of 3 weeks from the date of obtaining certified copy of this order.

The petitioner has stated that the representation dated 9-6-2003 is pending.

The representation annexed along with writ petition Annexure 5 is still pending, the Director General shall forward by the same and the same shall be treated as an appeal.

However, on filing the appeal by the petitioner, the same shall be decided by the authority concerned on merits and the period of limitation will not come in the way of the petitioner.

Subject to the observations made above, writ petition is dismissed on the ground of alternative remedy.

The writ petition is dismissed. There will be no order as to costs.

(Rajesh Tandon, J.)

30-10-2003

Mohit